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SIPDIS

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TAGS: [PGOV](#) [PREL](#) [PINR](#) [ETRD](#) [CS](#)

SUBJECT: COSTA RICA: INCHING TOWARDS CAFTA IMPLEMENTATION

REF: A) SAN JOSE 1975, B) SAN JOSE 1856

11. (SBU) SUMMARY: Costa Rica's coalition of 38 pro-CAFTA legislators (G38) has finalized two of the thirteen pieces of legislation the GOCR has identified as required to implement CAFTA-DR. The national assembly (Asamblea) is working flat out, but that is not likely to be enough to complete the other eleven bills in time, given the Asamblea's cumbersome rules and the stubborn delaying tactics of the opposition. Further complicating the situation, the Ministry of Foreign Trade (COMEX) and USTR have yet to complete implementation review consultations. Debate-driven legislative changes in the Asamblea or different-than-expected outcomes in the COMEX-USTR review may present new obstacles to completing implementation on time. In our view, prospects are slim that the GOCR will achieve the March 1 deadline. END SUMMARY.

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GLACIAL MECHANICS  
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12. (U) In order to understand the challenges facing the G38, it is helpful to have a brief overview of Costa Rican legislative mechanics. The Asamblea operates methodically and deliberately due to a cumbersome, multi-layered system of checks and balances. The principal elements of the legislative process are (1) assignment to committee; (2) review of amendments accumulated in committee; (3) first plenary debate and vote; (4) second plenary debate and vote, and (5) enactment into law. The second debate is to confirm the voting in the first, but often takes place after judicial review by the constitutional chamber (Sala IV) of the Supreme Court. Some legislation automatically requires Sala IV review. As few as 10 diputados may also petition for a review, meaning that most legislation, especially controversial items, face constitutional scrutiny. In either case, the Sala IV has up to 30 days to issue its ruling. If the Sala IV finds no fault, the legislation moves to the second plenary for the confirming vote. Disapproval by the Sala IV returns the bill all the way back to committee for "correction." The PAC-led opposition has vowed to take nearly all the CAFTA-DR implementing legislation to the Sala IV.

13. (U) Normal Asamblea rules do not restrict debate on a bill, allowing intransigent legislators to stretch the process indefinitely. However, the GOCR has applied a new "fast-track" rule (Article 41bis of the legislative rules of procedure) which permits a supermajority of legislators to limit the number of plenary sessions to 22 (with an

option for up to six more) on any given bill. In addition, the Asamblea has created a "streamlined" mechanism whereby bills can be assigned to a mini-plenary that consists of a total of 19 legislators. These mini-plenaries have the same debate and approval power of the full plenary.

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SO, WHAT'S THE SCORE?  
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¶4. (U) With the above as background, this is the status of the 13 items of implementing legislation as of December 18:

To be introduced:	1
In Committee:	1
In Plenary/Mini debate:	9 (8 under fast track rules)
Under Sala IV review:	0
Approved:	2

The approved legislation includes the dealer protection (casas extranjeras) and anticorruption (codigo penal) laws.

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HOT ISSUES  
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¶5. (SBU) In parallel with the legislative process, the Ministry of Foreign trade (COMEX) and USTR continue their implementation review. COMEX reports that intellectual property rights (IPR) remain a hurdle. Progress reportedly has been made in reaching an understanding on the penalty regime for IPR violations. A second issue is the lack of clarity between the GOCR's existing law on biodiversity and the proposed bill on patents. COMEX worries that legislative efforts to amend the biodiversity law to "clean up" any perceived contradictions with TRIPS or with the patent bill will be extremely contentious and possibly splinter the G38. Adoption of the UPOV convention is also generating significant controversy, with one petition pending before the Election Tribunal to hold the next national referendum on this convention. (COMMENT: The Tribunal is to rule on this in January. We expect they will say no. END COMMENT.)

¶6. (SBU) Other key issues include opening the telecommunications and insurance sectors, both of which face vociferous opposition from some public-sector unions. Members of the PAC-led opposition have told us that their strongest opposition will continue to be on Telecom issues. With the legislative and implementation review tracks moving in parallel, there is always a risk that the content of a bill in the Asamblea might veer away from USTR principles, particularly when COMEX and USTR do not agree on all issues. In addition, there are several CAFTA-DR obligations that the GOCR will address through regulations, such as SPS equivalence. While COMEX and the G38 have made progress in moving the CAFTA-DR implementing legislation through the Asamblea, the GOCR is still drafting the needed regulations, which it hopes to conclude by mid-January.

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MARATHON WORK SCHEDULE . . .  
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¶7. (U) The G38 is expending considerable energy to move the legislation. Starting December 1, when the Executive sets the agenda in the Extraordinary Session, the Asamblea work schedule was extended to include evening and weekend sessions, a highly-unusual step indicative of the Arias Administration's intent to complete the legislation in time. In public comments, both Arias brothers (the President and the Minister of the Presidency) have stressed the need to complete the Asamblea's work by January 15, in order to allow time for the expected Sala IV reviews and to complete final regulatory measures by March 1.

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BUT A STUBBORN OPPOSITION

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¶18. (SBU) Small numbers of hard-core CAFTA opponents (including students and union members) continue to threaten a few diputados and their families, picketing their homes in some cases. Inside the Asamblea, PAC members often walk out of the chamber (or refuse to enter), preventing a quorum. The opposition also employs other familiar obstructionist tactics, such as unleashing long-winded diputado Jose Merino del Rio (Frente Amplio) for one of his trademark six-hour filibusters, or dumping as many as 1000 amendments on bills under consideration.

¶19. (SBU) The PAC is under some pressure, including from its own members, to stop blocking the "will of the majority" who voted for CAFTA ratification in the October 7 referendum. This has opened some fissures in the party's Asamblea faction, but PAC leadership remains determined and disciplined. They acknowledge that CAFTA will happen in Costa Rica, but they insist that meeting the March 1 deadline (which they see as artificial) is the GOCR's "problem" and not PAC's.

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...AND AN EXHAUSTED, BRITTLE COALITION

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¶10. (U) The G38 itself faces internal problems, including members' health issues (e.g., one legislator receives cancer treatment early in the morning and then repairs to the Asamblea to establish quorum in the afternoon) and wavering coalition members, especially the problematic Libertarian Movement (ML) party. With a two-thirds majority required to overcome most obstacles or speed up action, the G38 has precisely the needed number, with no margin for error (or absence). All 38 members are needed to be on hand, all the time, to establish quorum, and to keep things moving.

¶11. (U) The expanded work schedule, longer hours, and tense work environment have taken a toll on not only the legislators, but also on exhausted Asamblea staff. It remains to be seen how quickly legislators will regain the momentum after the holiday recess. Our contacts report that the Asamblea will work through at least December 21, if not through December 24, probably returning on January 2 or January 7. Though the final recess calendar has yet to be approved, our contacts report that the Asamblea will more than likely work through at least December 21 and probably return to work on January 7. That would leave a mere nine days until the GOCR's self-imposed January 15 deadline, even working weekends.

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COMMENT

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¶12. (SBU) To its credit, the Arias administration is maintaining a full court press and has not asked the USG (or other CAFTA members, as far as we know) to consider an entry-into-force extension. We expect such a request to come next month. As we've noted previously (reftels), the prospects remain unlikely for the GOCR to clear all implementation hurdles in time. The timetable may be technically possible, but it does not appear to be politically feasible. On December 11, a former cabinet minister told the Ambassador that there was "zero chance" of the GOCR meeting the 1 March deadline. On December 12, a senior opposition figure told us it would be mathematically impossible to complete all the legislative work in time (although quite possible, he said, with an extension of two to three months).

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